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FISCAL IMPACT STATEMENT

LS 7259

BILL NUMBER: SB 372

NOTE PREPARED: Jan 6, 2009

BILL AMENDED:

SUBJECT: Unauthorized Immigration Matters.

FIRST AUTHOR: Sen. Kruse

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: *Department of Corrections:* The bill requires the Department of Correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and work with the United States Department of Homeland Security to deport offenders who are in the United States unlawfully.

Bail Establishment: This bill provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail.

Sheriffs: The bill requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons.

Safe Haven Policies: This bill prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual.

287(g) Program: This bill also allows law enforcement agencies to negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws.

Department of Workforce Development (DWD): It requires an individual filing a claim for Unemployment Insurance to provide certain information in person to DWD.

Office of the Attorney General (AG): This bill prohibits an employer from knowingly employing, after June

30, 2010, an unauthorized alien. The bill authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney under certain conditions; and (4) maintain certain records of violation orders.

Prosecuting Attorney: The bill authorizes a prosecuting attorney to file a civil action against an employer for knowingly hiring an unauthorized alien in the county where the alien is employed. It also prohibits a prosecuting attorney from filing an action against an employer that verified the employment authorization of an employed individual through E-Verify. It establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements.

Penalty Provision: The bill makes it a Class A infraction for a person who is unlawfully in the United States to register a motor vehicle. It also makes it a Class C misdemeanor if a person is unlawfully present in the United States and knowingly or intentionally operates or permits the operation of a motor vehicle on a public highway without financial responsibility in effect with respect to the motor vehicle. This bill provides that: (1) a person who counterfeits or falsely reproduces a driver's license with intent to use the license or to permit another person to use the license commits a Class D felony (instead of a Class B misdemeanor), and (2) a person who knowingly or intentionally produces or distributes a document that is not issued by a government entity and that purports to be a government-issued identification commits a Class C felony (instead of a Class A misdemeanor). The bill also makes making or distributing a forged instrument a Class B felony.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Indiana Department of Correction (DOC):* The bill requires DOC staff to verify the legal presence of all individuals incarcerated in DOC facilities and contact the U.S. Department of Homeland Security if DOC is unable to verify an individual's citizenship status. Additionally, the bill requires DOC to work with the U.S. Department of Homeland Security in deporting committed offenders who are unlawfully present in the United States. This bill will increase the workload of DOC in order to work with the U.S. Department of Homeland Security to deport criminal unauthorized aliens.

Currently, DOC verifies the legal status of offenders committed to their facilities by asking them an extensive list of questions in interview format. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC reports that they currently notify U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when a determination has been made that an offender is illegally present in the United States.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions. [DOC reverted \$261,000 to the General Fund at the end of FY 2008.]

Indiana State Police (ISP): Under the bill, the ISP is allowed to negotiate terms of a memorandum of understanding concerning a pilot project [the federal 287(g) program] for the enforcement of federal

immigration and customs laws. ISP could experience an increase in administrative expenditures if it is decided to apply for the program. If approved, expenditures would increase to provide officer training and enforce the provisions of the program. The increase in ISP expenditures would depend on the number of officers trained and the additional number of persons incarcerated for a federal immigration or customs law violation.

287(g)-trained officers are required to detain criminal unauthorized aliens and notify ICE. Currently, when a State Police officer makes an arrest, the offender can be held in a state correctional facility. To the extent that ISP trains officers in the 287(g) program, the state may experience increases in state detention expenditures. Increases in expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where pilot program-trained officers take identified undocumented aliens.

Trained 287(g) law enforcement officers notify either the U.S. Department of Homeland Security or ICE of criminal unauthorized aliens for deportation. If criminal undocumented aliens are deported or held temporarily for deportation hearings, then the state may not experience the full financial burden of detaining offenders. State expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Public Employer and Public Contractor Provision: This legislation affects public employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor or subcontractor use the E-Verify system as a condition of receiving a contract award. Requiring contracted employers to use verification systems may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. Increases in contracting expenses to the state are indeterminable.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure that all employees hired after the effective date are processed through the system. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Department of Workforce Development: Under current law, unauthorized aliens are not entitled to receive unemployment benefits. The bill requires individuals who apply for unemployment benefits to submit approved documents to DWD in person. The bill may decrease expenses paid from the Unemployment Insurance Benefit Fund to the extent unauthorized aliens no longer apply for and receive benefits. The bill may also decrease applications submitted to DWD for unemployment benefits and processing time to the extent that individuals lack documents necessary to apply for benefits.

Currently, individuals can apply for unemployment benefits online or in person. The legislation will require that individuals wishing to file an initial claim to provide information in person. If the legislation requires all individuals to file an initial benefit application in person, DWD may experience an increase in the number of applications submitted in person at WorkOne sites. Additionally, DWD's online submission website, Uplink Claimant Self Service for Unemployment Benefits (Uplink), may experience decreases in online submissions. DWD may require additional staff to process benefit applications in person and may require additional resources to provide staffing depending on the increase in applications that are submitted in person rather than online.

Office of the Attorney General: [Note: The provisions affecting the Office of the Attorney General have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011. Additionally, the provisions of this bill may only be undertaken by the AG to the extent there are funds available for employment enforcement.] The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or ICE. Consequently, the bill would potentially place several additional administrative responsibilities on the AG.

This bill allows the AG to investigate complaints made against employers who are suspected of employing unauthorized aliens. The bill also requires the AG to forward any instances of employers utilizing unauthorized aliens to ICE and allows the AG to notify local law enforcement as well as the prosecuting attorney in the county of jurisdiction of the offense.

The AG reports that it is expected that there would be a large volume of complaints filed with their office that would be diligently investigated. The AG estimates that the provisions of this bill will require at least a minimum appropriation of \$250,000 per fiscal year in order to provide salary and benefits for one staff attorney, one investigator, and one complaint analyst along with associated expenses and overhead costs.

Penalty Provision: The bill does the following regarding criminal penalties: (1) creates a Class A infraction for a person who is lawfully present in the United States to register a motor vehicle, (2) creates a Class C misdemeanor if a person is unlawfully present in the United States and knowingly or intentionally operates or permits the operation of a motor vehicle on a public highway without financial responsibility, (3) increases the penalty for counterfeiting or falsely reproducing a driver's license from a Class B misdemeanor to a Class D felony, (2) creates a Class B felony for knowingly or intentionally making more than one written instrument that falsely purports to have been made by someone else, and (3) increases the penalty for knowingly or intentionally producing falsified government-issued identification from a Class A misdemeanor to a Class C felony.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.)

Depending on mitigating and aggravating circumstances, each felony type is punishable by the following terms: (1) a Class D felony is punishable by a prison term ranging between 6 months to 3 years or reduction to Class A misdemeanor, (2) a Class C felony is punishable by a prison term ranging from 2 to 8 years, and (3) a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average length of stay in DOC facilities (1) for all Class D felony offenders is approximately 10 months, (2) for all Class C felony offenders is approximately 2 years, and (3) for all Class B felony offenders is approximately 3.7 years.

Explanation of State Revenues: *SCAAP Program:* Under the State Criminal Alien Assistance Program, the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that

apply and is based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund. The state of Indiana received \$871,000 in FFY 2008 from the SCAAP Program.

Civil Actions Against Violating Employers: State revenue may increase under the bill if there are increases in civil actions filed against employers found in violation of the employment provisions of the legislation. Increases in state revenue will depend on (1) the investigation results from the Attorney General, (2) decisions made by local prosecuting attorneys, (3) the number of violations, (4) the type of violation, and (5) the outcome of the civil proceedings. Fees are paid in the form of renewing licenses necessary for businesses as well as how many violations an employer has within the time frames specified in the legislation. Licensing fees vary between \$1,000 per license for initial offenses to \$25,000 for each license on the third offense. On the fourth offense, an employer is subject to license revocation.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provisions: The bill creates a Class A infraction for a person who is lawfully present in the United States to register a motor vehicle. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund.

The bill also creates a Class B misdemeanor for filing a false or frivolous complaint with the Attorney General. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Political Subdivision Application:* This bill also impacts the contracting of work for local units of government. (See *Explanation of State Expenditures*.) Actual increases to local expenditures is indeterminable.

Bail Establishment: This bill allows a court to consider the legal status of an individual as a flight risk when establishing bail. This may increase local expenditures to hold individuals between initial court appearances and court dates to the extent there is an increase in the number of individuals held without bond. Actual increases in holdings without bond are indeterminable.

Sheriffs: The bill also requires that sheriffs make a reasonable effort to determine the citizenship or

immigration status of individuals charged with either a felon or operating while intoxicated and is held in a county jail. If an individual is determined to be a foreign national, the sheriff is required to make a reasonable effort to verify if the individual has been lawfully admitted to the U.S. and if the lawful status of the individual is currently valid. If a sheriff is unable to verify the statuses contained in the legislation, they are required to contact the U.S. Department of Homeland Security. Additionally, if DOC requests information regarding the detained individual, the sheriff is required to provide such information. These provisions will increase the workload of local sheriffs to the extent they detain felony offenders and individuals who operate a vehicle while intoxicated in a county jail. The increase in workload is indeterminable.

287(g) Program: Local law enforcement may experience the same increase in expenditures discussed in the *Explanation of State Expenditures* dealing with the Indiana State Police and the 287(g) program. Increases in expenditures depends on the actions.

Local detention facilities may incur additional expenses if pilot program-trained officers take identified undocumented aliens for holding in local facilities. Actual increases in local expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where pilot program-trained officers take identified undocumented aliens. The actual increase in expenditures is indeterminable.

Officers trained under the pilot program may report criminal unauthorized aliens to the U.S. Department of Homeland Security or ICE for deportation. If this is the case and criminal undocumented aliens are either deported or temporarily held for deportation hearings, then local detention facilities may not experience the full financial burden of detaining offenders for the duration of their sentence if convicted of misdemeanor offenses. Local expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Prosecuting Attorneys: Prosecuting attorneys are allowed to bring civil actions against employers whom the Attorney General finds have violated the employment provisions of the legislation. As a result, this may increase the workload of local prosecuting attorneys. Actual increases in workload are indeterminable but will depend on the findings from the Attorney General as well as the decisions by the local prosecuting attorney.

Effect on Court Caseload: Court caseload will increase to the extent that prosecuting attorneys decide to bring civil action against employers who violate the employment provisions of the legislation. Actual increase in court caseload are indeterminable.

Penalty Provision: A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Court Fee Revenue:* [Note: The employment provisions affecting civil penalties have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011.] If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type

of case.

Criminal Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Under the SCAAP program, a portion of the costs for incarcerating or detaining undocumented criminal aliens will be reimbursed to local detention facilities provided detained individuals qualify under program guidelines. The actual amount that local detention facilities will receive is indeterminable, but will depend on qualifying expenses and criminal convictions of incarcerated undocumented criminal aliens.

Background Information: The counties that received payments from the SCAAP program in FFY 2008 and the total amounts received are shown in Table A.

Table A: 2008 County SCAAP Awards.	
County	Amount Received
Allen	\$22,220
Grant	\$4,375
Blackford	\$1,733
Hamilton	\$31,615
Noble	\$10,825
Johnson	\$4,071
Hendricks	\$9,557
Cass	\$15,808
Porter	\$1,491
Marion	\$94,637
Total	\$196,332

State Agencies Affected: All state agencies.

Local Agencies Affected: All local units.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; John Ruckelshaus, DWD.

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